



Stock Companies in Kosovo

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Abstract: Law on Business Organizations recognizes the stock companies as the type of business society. The paper will use methods of analysis, method of comparison, method of systemic analysis, etc. In addition to these methods author will use the combined methodology in order to reach the main goal of the paper. If the stock companies belong to business societies, the after their registration what is their legal arrangement? According to the Law on Business Organizations, the stock companies could have only one shareholder and many or a lot of them. Each shareholder has its shares which is the property of the shareholder. Shares could be transferred from a shareholder to other judicial/physic persons. The founding capital of stock companies is determined by the law. This society is judicial person which is responsible for all its obligations and for these obligations it is responsible with its assets and its property. Personal property of shareholders doesn't contain the property of shareholders companies. Shareholder is responsible for society with its wealth only if shareholder abuses with the shareholder company. Paper analyzes competences in the society and the duration of foundation, then statute, memorandum an regulations of the society are analyzed is analyzed. Author with the paper covers and analyzes the founding capital and the organs of the stock companies, always determined by the law. Paper also explains the ways of the dissolution of the stock companies.

Keywords: law; stock company; judicial person; competence; shareholder

Introduction

In the business law two subjects develop civil legal relations. They are private and judicial persons. Private/physic persons gain their subjectivity by birth whereas acting ability they gain in the age of 18. Judicial persons their judicial and acting

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ability gain with the act of registration. Registration shall be done in the Kosovo Agency of Business Registration. Kosovo Law on Business Companies numerates taxatively types of judicial subjects which have business status. Business companies according to the law are categorized into: individual associations, co-partnership associations, limited associations, associations with limited responsibility, public associations, co-operatives, social business associations and shareholders associations. Joint stock companies will be part of the analysis. The joint stock company is a business association which is established by two or more judicial persons. Joint Stock Company is artificial creature which is holder of the rights and obligations. It is established by shareholders that have divided quotas in the capital of the society. These quotas are determined in percentage. In order to establish them there are conditions to be fulfilled and these will be analyzed within the paper. Paper reviews also the legal regulation of society, legal acts beginning with the founding capital, contract of shareholders, statute, attributes and the identity of Joint Stock Company. By using method of analysis, combined method and the systemic method authors have analyzed norms which regulate this issues. Norms which regulate organs of Joint Stock Company and the way of their establishment and their dismissal are analyzed. This is done despite the fact that the law has concrete norms of establishing and functioning of company from the beginning. At the end paper analysis the ways of quenching of the company.

Judicial Subjectivity

Roman law has not recognized for a long time the meaning of judicial person and it considered only private/physic persons to be subject of law (Gams, 1976, p. 131). In Middle Ages judicial persons did not exist (Gams, 1976, p. 131). Our positive law except physic persons recognizes also judicial persons. Social creatures whose subjective quality is recognized are called judicial persons. (Aliu, 2013, p. 251). Judicial person is consisted of a determined number of physic persons. Judicial person is artificial creature to whom judicial order has recognized legal capacity (Vedriš & Klarić, 2003, p. 37). Based on this, law recognizes that unification of physic persons in order to achieve a determined goal in a special group for exercising determined activity, and that activity is supported by the legislation of the country where these subjects are. As the result it comes to the registration of the judicial person before the responsible institution by what the business subject is created. Judicial persons gain their judicial and activity ability with the act of registration in the Kosovo Agency of Registering Businesses. These persons are not identified as

physic persons and they act as entirety. Judicial persons in Kosovo according to the law are divided in various types and to these group business companies belong to. Business companies in Kosovo are regulated by the special law. Business companies are judicial persons whose activity aims increase of the property entirety (Aliu, 2013, p. 256). Joint stock companies are part of the business companies.

Notion of the Joint Stock Companies

Theories on judicial persons join together in one point when recognize that a judicial person is a determined organizational and property unity (Kondili, 2008, p. 142).

According to the Law on Business Organizations in Kosovo joint stock companies have the judicial status. Joint stock Company in Kosovo is a judicial person composed of shareholders. The aim of establishing the joint stock company is exercising of determined activity and the increase of the founding capital. Shareholder of a joint stock company is not co-owner and has not transferable interest in the property and the assets of the company. One joint stock company could have only one share holder (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 118, paragraph 1).

Shares are under the property of shareholder and it is expressed in a determined percentage within the capital of the company. Apart of the fact that shares are under the property of shareholder, he may transfer it to the other judicial or physic person. Transfer of shares could be conditioned by the statute.

Founding of the Joint Stock Companies

Legal civil disposals regulate the joint stock companies as judicial persons. Since it is the judicial person the joint stock company is an organizational unity that should respect positive laws. According to the law on business organizations the stock joint companies are founded by two or more judicial or private persons or trading company as shareholders (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 124, paragraph 1). A joint stock company may have only one shareholder (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 118). When it is founded by only one shareholder it is established with the founding act.

According to the Law on trade and trade companies of Albania, the shareholders company is Trade Company whose capital is divided in shares signed by founders.

Founders are private or judicial persons who are not personally responsible for the obligations of the society and however they cover losses by the clear values of signed shares (Ligji për Tregtarët dhe Shoqëritë Tregtare, i Republikës së Shqipërisë, 2008, article 105, paragraph 1). The founding act but also the contract shall have determined form by the law and it should be written. Contract or the founding act shall be verified by the competent organs but they also should be signed by all founders, respectively by contracting parties. Business society is founded by an unlimited number of persons. Despite the founding act respectively contract so it will be registered and in order to gain the judicial person status, share Holder Company should have its statute. Name, activity and the founding capital are the parts that have to be by all means in the statute. Since they are subjects of the law shareholder companies shall have attributes of the judicial person. Attributes of the judicial person are: name (firm), residence and *domicilus* which means the nationality of the judicial person (Aliu, 2013, p. 264).

Statute also covers quotas of shareholders, number of shares, and their nominal value. The shareholder company statute is drafted in written form. It may be changed and amended by producing legal aspects for shareholders.

Founding Capital

One of the basic preconditions for registration of the joint stock companies in addition to the name, residence and the nationality, it is also the capital. The law has determined the minimum amount for the registration of the joint stock company. Joint stock company capital (initial) shall be at minimum of 10.000 EUR or in any other bigger sum if that is required by the law (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 119, paragraph 1). Thus there are cases when this amount is overcome.

The Responsibility of Founders

Each physic or judicial person has respective responsibilities and the stock company has its rights and duties after founded. It shall pay all sorts of its obligations with its assets and its wealth. Shareholders are not responsible for the debts of the stock company and they are not responsible for these debts with their personal wealth. If the shareholder abuses with the stock company then he will be held responsible for abuses with his personal assets. Stock company after registering in ARBK may take

responsibility for these obligations. In such cases stock company is the only responsible party for pretending's and for the obligations (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 121, paragraph 2).

Competences and the Duration of the Joint Stock Companies

The Law on Business Organization (article 122) enumerates the competences of the company. Joint stock Company by being the judicial person has the right to raise indictment and it could be indicted, it could sign contracts, to gain possessions, to rent, to sell shares, to pledge or to put under the mortgage assets and the wealth of the company, etc.

All judicial subjects are founded for a determined goal. The main goal of the business association is profit. After registration business societies are founded without being limited on time. If the duration of the business association is extended, ARBK shall be informed and this shall be published in the ARBK register. (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 123, paragraph 2).

Statute

Order or the organization which is created by the society is done by statute or as called "regulations" of the organizations---a complex of forms which regulates the behavior for its members (Kelsen, 2017, p. 138). One of the attributes of the judicial person is the statute. Stock company is founded only after registration in ARBK and together with that the registration of statute as well. Statute is the most important act of the stock company. Despite the statute the stock company has also the memorandum which is founded and signed by the founders of the stock company. For managing the stock company the regulations that serve for functioning of the stock company are approved. All regulations shall be in accordance with the statute and with the memorandum of incorporation. Immediately after the establishment of the stock company the organizing meeting is held where initial directors are organized for completion of the organizing of the stock company. Shareholders Company can change the statute at any time. The statute is changed by the decision of the Board of Directors.

Organs of the Stock Company

Judicial person acts through its organs as foreseen by law, by the founding act or by the statute, and thus the will of the judicial person is expressed (Kodi Civil, i Shqipërisë 1994, article 31). Based on this and being that the company is judicial person it acts as one single within its organs. Always activities which are developed by these organs shall be legal acts. Within this they hold meetings which are evidenced in the minutes approved by the members of its organs. The meeting of the stock company is comprised of shareholders (Krasniqi, 2014, p. 220).

Assembly of Members

Each stock company has its assembly of members. Stock company shall organize at least once a year the annual assembly of members which would be known as annual assembly of the company (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 179, paragraph 1).

Assembly is the highest organ of governance and the organ where despite the shareholders take part the representatives of employees in the company as well (Baraliu, 2010, p. 162). This assembly is always held in the determined place. This place is determined by the statute and more frequently in the residence of the stock company. If the place is not determined by statute or by regulation then the place is determined by Board of Directors. By law the competences of assembly are as follows: changes and amending of statute and the regulations, election and discharge of directors, dissolution of the stock company, approval of financial statements, etc. Assembly has its chairperson who chairs with the meeting of the assembly. Voting in the assembly of members is done directly by the shareholder or through the representative.

Board of Directors, Director of the Stock Company

Each stock company shall have the board of directors. Board of directors manages with the stock company. Each director shall be a physical person. Board of directors appoints the director. It is not important if the director is a Kosovo inhabitant and it does not mean that he/she should be shareholder in the stock company. Stock company rewards director with the salary for the work he does for the stock company. Role of the Board of Directors is the control of reports and the financial

information and the development of company, calls on the meeting of the assembly of members, gives authorizations for directors and other persons. With the statute of the stock company the number of members of board is determined. The number of members of the board of directors according to the statute will be from 3 to 11 members. Their members are appointed by the general assemble of shareholders (Smaka, 2008, p. 181). Members of the board of directors serve for three years term. Director may be re-elected for unlimited terms (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 164, paragraph 4). Despite this director may resign at any moment. He may resign by giving a written information to the board of directors or the board chair. Resignation as soon as it is given becomes executive and his successor may take the position at the moment the resignation became executive. The board of directors can elect also the chairperson by the majority of votes and the board of directors can discharge and replace him any time by the majority of votes. (Ligji për Shoqëritë Tregtare, i Kosovës, 2018, article 170). Chairperson of the board leads always the meetings of the assembly of members and shall keep minutes of board meetings. Chairperson cannot be at the same mandate also managing director. Board meetings will be held at least two time during the calendared year.

Supervising Council, Internal Auditor and Auditing Commission

Supervising council is very important organ and at the same time very necessary organ of the stock company. Supervising council has at least three members. Always the number of supervising council shall not be pair. Supervising council elects the head of the council and its deputy (or some of them) from its membership, who have to be physic persons determined by statute (Smaka, 2008, p. 182).

The head and all members of the supervising council of this stock company are elected by the assembly of members. Within the supervising council there exist also some members that are called first members who are determined by the founding act of the company. Supervising council reports before the assemble of members related to responsibility which it has as the competence. Despite supervising council in the stock company it is the internal auditor as composing organ of the company. Internal auditor is physic person. Internal auditor is elected by the Council of director. The first auditor and the auditing commission are determined by the founding act or by the decision of the stock company. They will also be discharge in the same way as they are elected. Internal auditor reports the assembly of members.

Secretary of the Stock Company

Board of directors elects the secretary of the stock company. Statute determines the mandate of secretary and he is responsible to keep books of the shareholders. Secretary is always responsible to take minutes of the meetings of the members of assemble, meetings of the supervising council, meetings of the council of directors, etc. Organization of work is also the responsibility of secretary, as well as execution of the decisions of the assembly of members, council of directors and the supervising council.

Dissolution of the Stock Company

Judicial persons are established without determined duration. These persons do not die as physic person do, but they may dissolve according to the determined procedures by law.

It is important to be said that the existence of the judicial person ends by the state initiative or by decision of the company itself. Stock company as the judicial person dissolve when the necessary circumstances for registration and founding of the company disappear (Aliu, 2013, p. 262). Stock company as the judicial person ends with the agreed mandate of existence is over, by reaching the goal of creating the judicial person (Kondili, 2008, p. 157).

Stock company also is dissolve by the decision of the assembly of members which is taken by the majority of votes or by the court decision. Stock company is dissolve also by bankruptcy, by liquidation and in any other form foreseen with the statute or by the Law on Business Organizations.

Conclusions

Business law is divided in the general part which is the subjective part of the business law and in the contractual business law. First part of this law deals with the study of the subject and with the goal for studying this discipline of law. In this part of the law we talk also about the subjects who take part in these judicial relationships. Subjects are divided into judicial and physic persons. Both: the first and the second ones have their judicial and activity abilities. Physic persons gain their judicial ability in the age of 18 and lose it by death, their ability to act which they gain on the age of 18. Judicial persons are also part of this law and according to the law they gain

the judicial and acting ability. Judicial persons gain both abilities by registering. Registration of judicial subjects starting from the number of members, activity and their capital classifies in some cases some types of societies and business enterprises.

Stock company is society which is created by two or more judicial and physical persons, which is created for a determined goal and that has its identity and its budget. It is a characteristic that in this society the quotas of shares are divided for each shareholder in percentage. Stock company is artificial society whose main goal is profit. It is established for unlimited time. Initially for its establishment the contract between shareholders is concluded and signed by all shareholders. In addition the memorandum is an act where are written all issues which deal with the stock company. Statute is the basic act where all attributes of judicial person are registered. In this statute are written the name of the stock company, names of all shareholders, their personal numbers, their addresses and residences of shareholders. In the statute are registered also the activities of the company and its nationality as well. As attributes there are written the residence and the founding capital cannot be lower than 10.000 EUR.

It is important to stress out that individual societies do not pay income taxes whereas stock companies in addition to the income taxes they pay also VAT. These societies should submit for, on corporate income taxes by which the tax payment is done. The management of trade companies is very complicated. They number of organs is bigger than the number in other societies. Decision making is more complicated and almost every decision is dependent on 2/3 of votes. This is in one side good since the society for big decisions is more secure, but on the other side this postpone without strong reasons decision making and with this consequently also the work and the investment is the society. Legislation on business organizations is in accordance with the EU directives but no matter of this, the registration of the businesses faces difficulties when dealing with the bureaucracy. The lack of knowledge on market economy is also an obstacle.

Registration of shareholder companies needs improved and simplified procedures in order to make them functional. Procedures of getting license should also be simple and these procedures should be decentralized by ARBK so these procedures should be developed in the place where the activities of the company are to be developed.

Tax legislation system should be simple.

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